

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HOWARD SMITH,

Petitioner,

v.

EDWARD F. REILLY, JR. et al.,

Respondents.

Civil Action No. 03-1875 (HHK/JMF)

REPORT AND RECOMMENDATION

On September 8, 2003, petitioner filed an Emergency Petition for Writ of Habeas Corpus. Petitioner claims that he is being held unlawfully pursuant to an invalid arrest warrant issued by the respondent, the United States Parole Commission. Specifically, petitioner claims that, because he was a mandatory releasee, the Commission lacked the authority to issue a warrant for his arrest within the final 180 days of his maximum term.

On October 1, 2003, the petition was referred to me by Judge Kennedy. Because the government had not filed an opposition to petitioner's writ, I ordered respondents to show cause, in writing, why a writ should not issue. On November 17, 2003, respondents filed the United States' Motion to Transfer Petitioner's Petition for a Writ of Habeas Corpus, to which petitioner responded on November 26, 2003. Judge Kennedy also referred this motion to me, and for the reasons stated herein, I recommend that the government's motion to transfer be granted.

The Motion to Transfer

In their Motion to Transfer, respondents state that the petitioner cannot bring his claim in the District of Columbia because the court "lacks personal jurisdiction over 'the person having custody of the person detained' as required by 28 U.S.C. § 2243." United States' Motion to Transfer Petitioner's Petition for a Writ of Habeas Corpus ("R. Mot.") at 1. According to respondents, this court should transfer the petition to the U.S. District Court for the Eastern District of North Carolina, the district in which petitioner is presently confined.

Petitioner's Response

In response, petitioner argues that, as a D.C. Code offender and parolee, he properly filed his habeas petition in this court. Petitioner's Response to United States' Motion to Transfer Petition for Writ of Habeas Corpus ("P. Resp.") at 1. Petitioner makes several arguments in support of his claim. First, petitioner argues that the District of Columbia is the proper forum in which to file his habeas petition. According to petitioner, choice-of-forum rules restricting prisoners to naming only their immediate custodians as respondents in habeas petitions are designed to prevent forum shopping by federal prisoners, not D.C. prisoners. Second, petitioner argues that he properly named the Commissioners of the United States Parole Commission ("Commission"),¹ the Director of the District of Columbia Department of Corrections ("DOC"), and the Bureau of Prisons ("BOP") facility in North Carolina as proper respondents. Third, petitioner deplores the fact that respondents have filed their Motion to Transfer only one month

¹ In addition, petitioner argues that this court has allowed D.C. parolees to name the United States Parole Commission as a respondent when they challenge the revocation of their release to parole supervision. P. Resp. at 7.

before his sentence expires. Smith also argues that, because his claim will soon expire and respondents have yet to respond to the merits of his claim, the court should grant relief now.²

Analysis

In deciding whether the government's motion to transfer should be granted, there are two main issues that must be addressed.³ First, the court must decide whether a D.C. prisoner seeking habeas relief in federal court is limited to filing suit in the district in which his immediate custodian is located. Second, the court must consider whether Smith has properly named entities other than his custodian, specifically the United States Parole Commission and the D.C. Department of Corrections, as respondents in his petition.

Both of these issues are easily resolved. As the District of Columbia Circuit has held, "the law of this circuit is clear that '[a] district court may not entertain a habeas corpus action

² In the alternative, petitioner argues that the court should invoke the "capable of repetition yet evading review doctrine" or certify a class of D.C. prisoners whose mandatory paroles have been revoked within 180 days of the expiration of their sentences. P. Resp. at 3.

³ Petitioner raised several points in addition to these two main issues. Although the court finds petitioner's arguments distinguishing the applicability of choice-of-forum rules to federal and D.C. prisoners to be creative, petitioner's arguments simply have no support in the case law. In addition, while the court stated in Guerra that, once prisoners are paroled, "the Parole Commission *might* be then considered their proper custodian," that dicta does not compel a finding that the Parole Commission is, for certain, a proper respondent in this case. See Guerra, 786 F.2d at 417 (emphasis added). Similarly, while other D.C. parolees may have named the Parole Commission and others as respondents in their habeas petitions, that does not mean that those entities were *proper* respondents. Simply because those respondents were named in other cases does not prevent the government from arguing, nor the court from finding, that they are improper respondents in this case. Finally, the court is sympathetic to petitioner's arguments regarding the timing of the government's motion and the possibility that Smith's petition, as well as other habeas petitions filed in similar cases, may not be decided before they become moot. However, because the case is not properly before this court, petitioner will have to raise these issues elsewhere.

unless it has personal jurisdiction over the custodian of the prisoner." Chatman-Bey v. Thornbough, 864 F.2d 804, 810 (D.C. Cir. 1988) (quoting Guerra v. Meese, 786 F.2d 414, 415 (D.C. Cir. 1986)). The court also stated that it is "well settled that the appropriate defendant in a habeas action is the custodian of the prisoner." Id.

_____ It is equally clear that the United States Parole Commission and the D.C. Department of Corrections are not Smith's custodians even though they were the entities responsible for his incarceration. Id.; Guerra, 786 F.2d at 416; see also Blair-Bey v. Quick, 151 F.3d 1036, 1039 (D.C. Cir. 1998) (stating at the outset that the prison warden, not the United States Parole Commission or the D.C. Board of Parole, was the only proper party in prisoner's habeas corpus petition challenging parole-related decisions). Rather, Smith's custodian, and thus the proper defendant in this federal habeas case, is the warden of the Rivers Correctional Institution in Winston, North Carolina, where he is being held. See Chatman-Bey, 864 F.2d at 811. Accordingly, Smith's habeas petition should be transferred to the United States District Court for the Eastern District of North Carolina because only that court may properly exercise personal jurisdiction over the "person having custody of the person detained." See 28 U.S.C. § 2243. I therefore recommend that the United States' Motion to Transfer Petitioner's Petition for a Writ of Habeas Corpus be granted.

I remind both parties that, under LCvR 72.3(b), they must file written objections to this Report and Recommendation within 10 days after being served with a copy. Objections must "specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection." LCvR 72.3(b). Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of

appeal from an order of the District Court adopting such findings and recommendations. See
Thomas v. Arn, 474 U.S. 140 (1985).

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

DATED: